IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 1329 of 1991

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAMNIKLAL RANGILDAS & 3 - Applicant(s)

Versus

JIVANDAS KHIMJI (DIED) THROUGH HIS HEIRS DHIRAJBEN JIVANDAS & 2 - Opponent(s)

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Appearance :

MR SURESH M SHAH for Petitioner No(s).: 1,2,3,4.
Respondent No 1 UNSERVED AS EXPIRED.
MR DG CHAUHAN for Respondent No(s).: 2,3.

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CORAM :HON'BLE MISS JUSTICE R.M.DOSHIT

Date : 15/07/2005

ORAL JUDGMENT

At the request of the learned advocate Mr.Shah the respondent no.1 is ordered to be deleted from the cause-title of the Revision Application.

Feeling aggrieved by the judgment and order dated 17th November, 1990 passed by the learned Assistant Judge, Jamnagar in Regular Civil Appeal No.207/1982, the respondents (plaintiffs in Regular Civil Suit No.193/1975) have preferred the present Revision Application under Section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as, **"the Rent Act"**).

The petitioners are the owners of a residential house situated at Jamnagar. Under rent note Exh.43 the suit house was leased to the defendant for a monthly rent of Rs.350=00. The plaintiffs instituted Regular Civil Suit No.193/1975 in the Court of learned Civil Judge (J.D.), Jamnagar for recovery of possession of the suit house and the amount of rent due on the grounds, inter alia, that the defendant was in arrears of rent since 1st July, 1971 and that he was not ready and willing to pay the rent; that the defendant had, in contravention of the terms of tenancy, used the suit house or part of it for business purpose. The defendant contested the suit vide written statement Exh.11. He denied the allegations made

against him. He also raised the dispute as to the standard rent of the suit house. The defendant had moved Misc. Application No.106/1974 for determination of standard rent of the suit house. The learned Civil Judge, by judgment and order dated 2nd September, 1982, dismissed the suit for possession instituted by the plaintiff and also the Misc. Application No.106/1974 filed by the defendant. Feeling aggrieved, the heirs and legal representatives of the defendant preferred Regular Civil Appeal No.207/1982 and the plaintiff preferred Regular Civil Appeal No.211/1982. Both the Appeals were heard and decided by a common judgment. The lower appellate Court confirmed the finding recorded against the plaintiffs and dismissed the suit instituted by the plaintiffs. The Misc. Application filed by the defendant was allowed. The lower appellate Court has held Rs.205=00 to be the standard rent of the suit house. Therefore, the present Revision Application.

Mr.Shah has submitted that the plaintiff had categorically alleged that the defendant had sublet part of the suit house to one Jamnagar Abrasives Manufacturing Company and that the said Company had started its

business in the suit house. In answer to the said allegation the defendant, in his written statement, admitted that he was doing business in the name of Jamnagar Abrasives Manufacturing Company at Aliabada and that in the letter-head of the said Company the address of the suit house was mentioned. Mr.Shah has, therefore, submitted that the defendant no.1 thus admitted that he was carrying on business in the name of Jamnagar Abrasives Manufacturing Company from the suit house. Referring to the rent note (Exh.45), he has submitted that under the said rent note the defendant did specifically agree that he shall use the suit house for residential purpose alone. Thus, the defendant was guilty of committing breach of condition of tenancy. The plaintiff was, therefore, entitled to a decree for possession as envisaged by Section 12(1) and Section 13(1)(k) of the Rent Act. He has next submitted that on the facts of the case admittedly Section 12(3)(a) of the Rent Act was not attracted. It was, therefore, the duty of the Court to ascertain whether or not the defendant had earned protection under Section 12(3)(b) of the Rent Act. He has taken me through the observations made by the lower appellate Court and has submitted that the

lower appellate Court, though has recorded that the defendant did pay the rent pending the suit and the Appeal, the lower appellate Court has not examined whether the deposits were made regularly every month as envisaged by Section 12(3)(b) of the Rent Act as it stood prior to the amendment by Gujarat Act No.7 of 1985.

I am unable to agree with Mr.Shah. It should be noted that except the bare assertion made in the plaint there is nothing on the record to hold that the defendant had been carrying on business in the suit house as alleged. Both the Courts below have rightly held that the plaintiffs had failed to prove that the defendant had committed breach of condition of tenancy. As to the payment of rent pending the suit and the Appeal, it should be noted that even prior to the date of the suit the defendant had raised dispute as to the standard rent of the suit house in Misc. Application No.106/1974. It is an undisputed fact that pending the suit neither the Misc. Application was decided nor was order for payment of interim standard rent made. As held by catena of judgments the defendant was under no obligation to pay the rent regularly every month until the dispute as to

the standard rent was resolved or an order for payment of interim standard rent was made. As observed by the lower appellate Court pending the Appeal, by order dated 9th March, 1983, the learned District Judge had directed the defendant to deposit interim standard rent of Rs.300=00 every month. Thus, pending the Appeal the defendant was obliged to deposit the interim standard rent of Rs.300=00 and not the agreed rent of Rs.350=00. The lower appellate Court has indeed recorded that before the date of the suit the defendant had paid a sum of Rs.11,900=00 towards the rent of the suit house and pending the suit he had paid a sum of Rs.28,300=00. Thus, before the decree passed in the suit the defendant had paid a sum of Rs.40,200=00. It has further been observed that pending the Appeal the defendant had paid Rs.28,800=00. Thus, the defendant had paid up the rent @ Rs.300=00 for the period from 1st July, 1971 to 30th August, 1990 (sic 31st August, 1990). Mr.Shah has produced certified copy of statement of deposits made in the Court. On perusal of the said statement it appears that for the period commencing from 23rd March, 1983 the defendant had made intermittent lump-sum deposits of Rs.600=00, Rs.900=00 or Rs.1,800=00. Apparently, it seems that pending the Appeal the

defendant did deposit the interim standard rent of Rs.300=00 as directed every month or rather in advance. By the date of the decision in Appeal, the defendant had made a total payment of Rs.69,000=00. In view of the monthly standard rent of Rs.205=00 determined by the lower appellate Court the payment made by the defendant was far in excess of the rent payable. Thus, in my view, the defendant has indeed earned protection against eviction by making payment of the rent pending the suit and by making payment of interim standard rent pending the Appeal as directed and by making payment in excess of the standard rent determined by the Court.

No other contention is raised before me.

In view of the above discussion, the plaintiffs are not entitled to a decree for eviction. Revision Application is dismissed. Rule is discharged.

(Ms. R.M.Doshit, J.)

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